



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 7, 1992

Mr. Patrick J. Fleming
Parker County Attorney
One Courthouse Square
Weatherford, Texas 76086

OR92-376

Dear Mr. Fleming:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 15895.

The sheriff of Parker County received an open records request from a newspaper for the personnel records of two named constables. You contend that you may withhold these records because pursuant to section 3A(b) of the Open Records Act the two constables requested in writing that their personnel files be closed to public access. You also urge that the requested information is excepted from required public disclosure by section 3(a)(1), 3(a)(2) and 3(a)(8) of the Open Records Act.

Section 3A of the Open Records Act states in part:

(a) Each employee or official of a governmental body and each former employee or official of a governmental body, shall choose whether or not to allow public access to the information in the custody of the governmental body *relating to the person's home address and home telephone number*. Each official and employee and each former official and employee shall state that person's choice to the main personnel officer of the governmental body in a signed writing . . . If the official's or employee's or the former official's or employee's choice is to not allow public access to the information, the information is protected as provided by Section 3 of this Act. . . .

(b) If, during the course of the employment or the term of the office, or if, after leaving service with the governmental body the person wishes to close or open public access to the information, that individual may request in writing that the main personnel officer of the governmental body close or open access, as the case may be, to the information. [Emphasis added.]

The files of both constables contain letters in which each constable requests that *all* information in his file be closed to public access pursuant to section 3A(b) of the Open Records Act. However, this provision in the Open Records Act authorizes employees or officials of a governmental body and former employees or officials of a governmental body to elect not to disclose information only about that person's home address and home telephone number, not all information in a person's personnel file. Thus, pursuant to section 3(A) of the Open Records Act, you may withhold information about the constables' home addresses and home telephone numbers.

You expressed concern for the privacy rights of the constables and in that regard raise sections 3(a)(1) and 3(a)(2) of the Open Records Act as exceptions to the required disclosure of these files. Section 3(a)(1) protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision."

Section 3(a)(1) applies to information when its disclosure would result in a violation of the common-law tort of invasion of privacy through the disclosure of private facts. *Industrial Foundation of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 at 678 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In order for the release of the information to constitute a violation of the common-law tort, the information must (1) contain highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person, and (2) be of no legitimate concern to the public. *Id.* This test is also used in applying section 3(a)(2) which protects private information in personnel files. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Most of the information in the requested files is not about the constables' private affairs, but is about their job performance, a legitimate interest to the public. See Open Records Decision Nos. 470 (1987) (reversed in part on other grounds by Open Records Decision No 579 (1990) at 4); see also Open Records Decision Nos. 329, 316 (1982). Some of the documents in one of the files contain details about one of the constables which are of no legitimate concern to the public. These you must withhold. We have marked the documents accordingly.

You urge that the files in question may be withheld pursuant to section 3(a)(8), the law enforcement exception. Information is excepted from disclosure by section 3(a)(8) if release of the information will "unduly interfere with law enforcement and crime prevention." *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Generally, section 3(a)(8) does not apply to information in the personnel file of a peace officer. See Open Records Decision Nos. 562 (1990); 329 (1982). However, we have marked one item in one of the files to which the exception does apply. The release of this could unduly interfere with the sheriff's law enforcement and crime prevention responsibilities.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-376.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Opinion Committee

KHG/lmm

Ref.: ID #15895

Enclosures: Marked documents

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(w/o enclosures)